Where a criminal offence has been established it is true that the question of ownership is, generally speaking, less likely to be open to doubt, and, if on this issue the Magistrate feels there is doubt or difficulty, an order should not, as was said by Sir Charles Murray-Aynsley in *Ho York Quin's*[5] case, be made. In any event an order does not preclude civil proceedings to determine ownership. In the present case I think the learned Magistrate had adequate grounds for holding that Hazara Singh was the owner of the jewellery. I am at a loss, however, on perusal of the record to discover any foundation for his expression of the view that these two pawnshops are in the habit of accepting articles from all and sundry without exercising any measure of prudence. The only piece of evidence I can trace which appears to bear on the matter even remotely is a reply by one of the pawnshop assistants to the Court to the effect that his firm did not ask for original receipts for the gold articles. Without information as to the general practice of pawnbrokers in this respect it cannot be inferred that this disclosed a lack of care. Even if it did it would not justify stigmatising the other appellant. The learned Magistrate made a very sweeping condemnation and I should have expected him at least to have indicated the portions of the evidence he considered warranted his conclusion.

In my view it was not shewn there was any carelessness on the part of either Hazara Singh or of either of the appellants. Applying this view to the question of a disposal order (I may say in passing I doubt if the second part of the Magistrate's order, even though it may be equitable, is legal) I consider justice will best be met by amending the Magistrate's order as follows. The jewellery will be returned to the owner Hazara Singh on payment by him to the appellants of half the sums for which in each case the jewellery was pledged, such payments to be made within one calendar month of the date of this judgment. Any sums already paid by S. N. M. Shaik Allaudin to the appellants will, however, be credited to Hazara Singh in respect of the payments due to be made by him.

Order accordingly.

K. NATARAJAN v. EWART & CO. (CIVIL ENGINEERS) LTD.

[O. C. J. (Whyatt C.J.) November 21, 1956]

[Singapore — Civil Suit No. 544 of 1955]

Procedure — Discontinuation of counter-claim without leave of Court — Amendment of defence.

In this case by an Order of Court dated August 14, 1956 the plaintiff obtained leave to amend his Statement of Claim and by the same Order of Court the defendants were given liberty to deliver an amended defence. After the amended Statement of Claim was served on the defendants, they made a number of amendments to their defence, some of which were not necessitated by or in any way consequential upon the plaintiff's amendments. The defendants also discontinued their counter-claim. The plaintiff thereupon applied to the Court to determine (i) whether the counter-claim had been discontinued contrary to the Rules of the Supreme Court, and (ii) whether certain of the amendments to the defence were in excess of the authority of the Order of Court of August 14, 1956.

Held: (1) in discontinuing their counter-claim without obtaining leave of the Court, the defendants had committed a breach of the Rules of the Supreme Court;

(2) the Order of Court did not give the defendants leave to amend generally but only to make amendments consequential on the amendment of the plaintiff's Statement of Claim;

(3) therefore the defence must be struck out unless the defendants applied to Court for leave to discontinue their counter-claim and to amend their defence.

Cases referred to:—

(1) *Fox v. Star Newspaper. Co.* (1898) 1 Q.B. 638.

(2) *Han Poo (Boo) Joon v. Baey Kim Swee & Co. Ltd.* Singapore — Suit No. 1091 of 1955 — unreported.

CIVIL SUIT.

N. A. Christopher for the plaintiff.

J. L. P. Harris for the defendants.

Whyatt C.J. : — Since the writ in this action was issued in March 1955, these proceedings have had an unfortunate history. There has been voluminous correspondence between the solicitors for the parties, followed by numerous interlocutory applications, which culminated in part of the plaintiff's claim being struck out in June 1956 on the formidable ground that it was unintelligible. The plaintiff thereupon, with the leave of the Court, amended his Statement of Claim and the result, though not one of the most elegant specimens of pleading, at least presents the claim in intelligible form.

It might have been expected, and certainly it could have been hoped, that the Statement of Claim, having been recast in this manner, the progress of this action towards trial would take a smoother course. But this, unfortunately, has not proved to be the case. When the plaintiff was given leave to amend his Statement of Claim, the defendants naturally asked for and were given leave to amend their defence as well. This they proceeded to do, making a number of important amendments to meet the amended allegations in the Statement of Claim. But in addition, they availed themselves of the opportunity to make further amendments to the defence, which were not necessitated by or in any way consequential upon the plaintiff's amendments and lastly they discontinued their counter-claim.

It is not surprising that the plaintiff objected to the defendants making further amendments and discontinuing their counter-claim in this manner. The plaintiff's objections were, however, communicated to the defendants' solicitors in a reasonable and temperate letter from his solicitors on the 5th September 1956 in which they stated that in their view the additional amendments were in excess of authority and invited — that is the word they used — the defendants to apply to the Court for leave to discontinue the counter-claim as required by the Rules of Court.

It might be thought that an opportunity had arisen a second time to set the course of the proceedings towards smoother waters, but again the expectation was not fulfilled. The defendants did not accept the plaintiff's invitation; they merely replied they did not propose to make any application to the Court but they offered without prejudice a sum of $75 in payment of the costs which the plaintiff might have incurred as a result of their having discontinued the counter-claim. The plaintiff's solicitors stated, in reply, that they were not prepared to deal with the matter on these lines. It is, of course, well settled that parties to litigation must comply with the Rules of Court and cannot, so to speak, contract out of them by entering into arrangements of the kind suggested in this case; and in my view the plaintiff's solicitors were perfectly correct in replying as they did. Thereafter there was further lengthy correspondence followed by more affidavits until finally the matter came before me for purpose of determining two questions; first, whether the counter-claim had been discontinued contrary to the Rules of Court, and secondly, whether certain of the amendments to the defence were in excess of the authority conferred by an order made by the Judge in Chambers on the 14th August 1956.

The plaintiff's contention that the counter-claim was improperly discontinued is clearly sound and indeed, it is only right I should say this point was not seriously disputed by counsel for the defendants. It is clearly established that once proceedings have reached the stage which these proceedings had reached, a plaintiff cannot discontinue his action without the leave of the Court and it is equally clear that a defendant cannot discontinue his counter-claim either; as Chitty L.J. pointed out in *Fox v. Star Newspaper Co.*[1] the same rule applies to the withdrawal of matters of defence or counter-claim by a defendant as to a statement of claim by a plaintiff. The litigant, being no longer *dominus litis,* it is for the Court to say whether the counter-claim may be discontinued and if so, upon what terms. In the present instance the defendants failed to apply to the Court for the necessary leave before discontinuing their counter-claim and consequently, they committed a breach of the Rules of Court in this matter.

As regards the second question, the defendants admit that certain amendments whereby they withdrew the allegation that the plaintiff had no cause of action because he was merely acting as an agent in this transaction were not consequential upon the amendments made by the plaintiff to his Statement of Claim. Indeed the facts which led the defendants to withdraw this plea of agency had been known to them since September 1955, that is to say, long before the plaintiff amended his Statement of Claim. They contend, however, that the order of the 14th August 1956 should be construed as giving them leave to amend generally and not merely for the purpose of pleading to the amendments in the Statement of Claim. The relevant part of the order reads as follows :—

> "IT IS ORDERED that the applicant be at liberty to amend within 7 days from the date hereof the Statement of Claim herein in the manner shown underlined and deleted in green ink in the fresh draft copy delivered at this day's hearing of the said Summons-in-Chambers and initialled by the Judge AND IT IS FURTHER ORDERED that the Defendants be at liberty to deliver an amended Defence within 14 days from the delivery of the Amended Statement of Claim AND IT IS LASTLY ORDERED that the costs of and incidental to this application and the costs of the amendment and any consequential amendments be the Defendants' in any event".

It is true that the order does not say in terms that the amendments to the defence are to be limited to consequential amendments but neither does it say that the defence may be amended generally. It is silent on the point but it is significant that the order concludes by providing that the defendants are to have the costs of any consequential amendments. Clearly what the learned Judge had in mind was that the amendments to the Statement of Claim would require amendments to be made to the defence and therefore he gave leave for these to be made, adding, at the end of the order, that the costs of any consequential amendments were to be paid by the plaintiff in any event.

Counsel informed me during the course of the argument that there was no suggestion at the hearing before the learned Judge that the defendants should be given leave to amend generally nor even that they had any intention or desire to amend otherwise than for the purpose of pleading to the amended Statement of Claim. If the defendants had intended to withdraw their plea of agency (which incidentally involved striking out 12 of the 21 paragraphs in the original defence) they should have asked for leave to do so at the hearing of the summons. If they had done so, and the learned Judge had acceded to their request there would, no doubt, have been a statement in the

order to the effect that leave had been given to amend generally, or to withdraw a particular plea, or whatever it might be, and the order would also have dealt specifically with the costs of such further amendments or withdrawal, instead of, stating merely that the costs of "consequential amendments" were to be the defendants' in any event.

In my view, it was never intended that the order of the 14th August should give the defendants leave to amend generally, nor do I think the language of the order is such as to require this meaning to be placed upon it. The defendants sought to support their argument by reference to the case of *Han Poo (Boo) Joon v. Baey Kim Swee & Co. Ltd.*[2] where a defendant who amended without leave pursuant to Order 29 rule 5, and introduced into his amendments matters not consequential upon amendments to the Statement of Claim, was allowed to do so on payment of the costs of the plaintiff's application to strike out. The short answer to this argument is that the decision in that case dealt with an amendment delivered without leave, under Order 29 rule 5 whereas the present case is concerned with construction of a Judge's order made, in the exercise of his discretion, after hearing argument. It is, therefore, no precedent for the present case, nor do I think, in view of the important difference between the two procedures, that it provides any useful guidance in this case. Accordingly, therefore, the defendants' argument on the second point also fails.

For these reasons, I am of the opinion that the discontinuance of the counter-claim and the amendment of the defence by the withdrawal of the plea of agency were unauthorised and contrary to the Rules of Court. I propose, therefore, to order that the defence be struck out unless the defendants apply to the Court for leave to discontinue their counter-claim and to amend their defence by withdrawing the plea of agency before 10.30 a.m. on the 30th November 1956.

The plaintiff must have the costs of this application.

Order accordingly.

Solicitors: *Christopher & Francis; Braddell Bros.*

REG. v. MURUKAIYAN RASOO

[A. Cr. J. (Whitton J.) October 25, 1956]

[Singapore — Criminal Appeal No. 112 of 1956]

Criminal Trial — Sentence — Inadequacy of sentence.

This was an appeal by the Public Prosecutor against the sentence of binding over passed by the District Judge on the respondent after he was convicted of voluntarily causing grievous hurt. In passing the sentence, the learned District Judge said: "I am aware that the offence itself is a serious one, but taking into consideration the circumstances of this case and the personality of the accused, I did not think a sentence of imprisonment would serve any useful purpose. He is an intelligent young man but highly sensitive and emotional."

Held: (1) a Court dealing with the question of sentence alone must proceed on the assumption that the accused in whom some element of mental instability has been proved is in no different position as far as *mens rea* is concerned from an accused on whose behalf no such plea has been advanced;

(2) in deciding the appropriate sentence the first and foremost consideration by which the Court should be guided is the public interest. In this case the learned District Judge was wrong in inflicting a merely nominal punishment.

MAGISTRATE'S APPEAL,

S. E. Teh (Crown Counsel) for the appellant.

P. F. X. Leonard for the respondent.

Whitton J. : — This is an appeal by the Public Prosecutor against a sentence of binding over for one year in the sum of $500 passed by a District Judge on the respondent after he was convicted of voluntarily causing grievous hurt.

The complainant was a young woman named Theresa Thangasamy. For a period in 1955 she was engaged to the respondent, but the engagement was broken off in August. There is some evidence of friction between them subsequently in the Income Tax Department by which they were both employed, but there is no suggestion of any dispute or provocation at any date shortly before 1st February 1956 when the offence was committed. On that morning shortly before 9 o'clock the complainant had with some girl friends gone up some steps at an entrance to the Fullerton Building leading to a lift when the respondent suddenly appeared and attacked her with a knife, inflicting two injuries, the first about 4 inches deep on the chest, and the second — after she had fallen to the ground — on the abdomen, this wound being about ½ inch deep. In the medical officer's opinion the first injury could have proved dangerous to life. The complainant was detained thirteen days in hospital.

The learned District Judge gave the following reasons for passing what on the face of it is a very light sentence for an assault of this nature with a knife :—

"The circumstances leading up to this case as far as the accused was concerned are unfortunate. After a series of bitter disappointments during the past 5 or 6 years he had to suffer another disappointment in his love affair with the present complainant. I am aware that the offence itself is a serious one, but taking into consideration the circumstances of this case and the personality of the accused, I did not think a sentence of imprisonment would serve any useful purpose. He is an intelligent young man but highly sensitive and emotional. After having watched him in Court and after hearing his evidence and that of Dr. Robinson (D.W. 9), I consider that a finding of guilt against him would be a sufficient punishment. I had thought of